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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,364	04/08/2002	Kim Boutler	270.62USWO	1427
23552	7590	04/21/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			BAUM, STUART F	
			ART UNIT	PAPER NUMBER
			1638	
DATE MAILED: 04/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/980,364	<b>Applicant(s)</b> BOUTILIER ET AL.	
	<b>Examiner</b> Stuart F. Baum	<b>Art Unit</b> 1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-74 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim objection*

1. Claim 64 is objected to for being dependent on claim 4 instead of claim 63. For reasons of compact prosecution, the claim is interpreted as being dependent on claim 63. Correction is requested.

### *Election/Restrictions*

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-17, 19-27, 37-53 and 59-60 drawn to an isolated DNA molecule, vector comprising said isolated DNA molecule operably linked to a regulatory element, a plant transformed therewith, a method of producing somatic embryos, a method of modifying the regenerative capacity of a plant and a method of producing an apomictic plant.

**If Applicant elects Group I, Applicant is also to elected one DNA sequence encoding one corresponding amino acid sequence from the list below:**

**SEQ ID NO:1 encoding SEQ ID NO:2**

**SEQ ID NO:3 encoding SEQ ID NO:4**

Group II, claim(s) 18, 61-62, and 74, drawn to an isolated protein.

Group III, claim(s) 28-36, drawn to a promoter sequence.

Group IV, claim(s) 54, drawn to an isolated DNA molecule encoding a protein consisting of two AP2 DNA binding domains.

Group V, claim(s) 55-58, drawn to a method of producing a protein comprising a transactivation system.

Group VI, claim(s) 63-73, drawn to an isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6.

3. Applicant is reminded that nucleotide sequences either encoding different proteins or specifying specific expression patterns are structurally distinct chemical compounds and are unrelated to one another, as are different proteins structurally distinct chemical compounds and unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq (see MPEP 803.04 and 2434). This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

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4. The inventions listed as Groups I-VI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the isolated DNA molecule of Group I is taught in the prior art. Nakamura (April 1999, NCBI Accession Number AB025629) teach an isolated DNA molecule comprising a nucleotide sequence that hybridizes to the nucleotide sequence of either SEQ ID NO:1, 3, or 5 or fragment thereof.

5. In addition, the claims are not linked by a single technical feature because they are each drawn to products and processes not shared by the other. The isolated DNA molecule, vector comprising said isolated DNA molecule operably linked to a regulatory element, a plant transformed therewith, a method of producing somatic embryos, a method of modifying the regenerative capacity of a plant and a method of producing an apomictic plant of Group I is not shared by the isolated protein of Groups II, is not shared by the promoter sequence of Group III, is not shared by the isolated DNA molecule encoding a protein consisting of two AP2 DNA binding domains of Group IV, is not shared by the method of producing a protein comprising a transactivation system of Group V, which is not shared by the isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6 of Group VI.

The isolated protein of Groups II is not shared by the promoter sequence of Group III, is not shared by the isolated DNA molecule encoding a protein consisting of two AP2 DNA binding domains of Group IV, is not shared by the method of producing a protein comprising a transactivation system of Group V, which is not shared by the isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6 of Group VI.

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The promoter sequence of Group III is not shared by the isolated DNA molecule encoding a protein consisting of two AP2 DNA binding domains of Group IV, is not shared by the method of producing a protein comprising a transactivation system of Group V, which is not shared by the isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6 of Group VI.

The isolated DNA molecule encoding a protein consisting of two AP2 DNA binding domains of Group IV is not shared by the method of producing a protein comprising a transactivation system of Group V, which is not shared by the isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6 of Group VI.

The method of producing a protein comprising a transactivation system of Group V is not shared by the isolated DNA molecule comprising a nucleotide sequence that hybridizes to SEQ ID NO:6 of Group VI.

6. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the literature and sequence searches required for each of the Groups are not required for another of the Groups, restriction for examination purposes as indicated is proper.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 571-272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

A handwritten signature in black ink, appearing to read "Stuart F. Baum". The signature is fluid and cursive, with the first name "Stuart" and last name "Baum" clearly distinguishable.

Stuart F. Baum Ph.D.  
Patent Examiner  
Art Unit 1638  
April 19, 2004